FORM PTO-1083

PATENT
Attorney Docket No. 202531

In re Application of: Dieter PELZ et al.
Application No. 09/402,721
Filed: December 28, 1999
For: METHOD FOR PRODUCING BEER

COMMISSIONER FOR PATENTS
Washington, D.C. 20231

Sir:

Transmitted herewith is a response to an office action in the subject application.

☐ Applicants claim small entity status of this application under 37 CFR 1.27.

☐ Petition for Extension of Time
- ☐ Applicants petition for a one-month extension of time under 37 CFR 1.136, the fee for which is $110.00 (enclosed).
- ☐ Applicants believe that no petition for an extension of time is necessary. However, to the extent that such petition is deemed necessary, Applicants hereby petition for a sufficient extension of time to render the present submission timely. Please charge Deposit Account No. 12-1216 for the appropriate petition fee.

☒ No additional claim fee is required.

☐ Other:

The claim fee has been calculated as shown below:

					Small Entity		Other Than A Small Entity	
	Claims Remaining After Amendment		Highest Number Previously Paid For	Extra Claims Present	Rate	Addit. Claim Fee	Rate	Addit. Claim Fee
Total	37	Minus	39	= 0	x 9=	$	x 18=	$0.00
Independent	3	Minus	3	=	x 42=	$	x 84=	$0.00
☐ First Presentation of Multiple Claim					+ 140=	$	+ 280=	$
					Total	$	Total	$

☐ Please charge my Deposit Account No. 12-1216 in the amount of $. A duplicate copy of this sheet is attached.

☐ A check in the amount of $ is attached.

☒ The Commissioner is hereby authorized to charge any deficiencies in the following fees associated with this communication or credit any overpayment to Deposit Account No. 12-1216. A duplicate copy of this sheet is attached.
- ☒ Any filing fees under 37 CFR 1.16 for the presentation of extra claims.
- ☒ Any patent application processing fees under 37 CFR 1.17.

Respectfully submitted,

Jeremy M. Jay, Reg. No. 33,587
LEYDIG, VOIT & MAYER, LTD.
700 Thirteenth Street, N.W., Suite 300
Washington, DC 20005-3960
(202) 737-6770 (telephone)
(202) 737-6776 (facsimile)

Date: 17 April 2002

#9

PATENT
Attorney Docket No. 202531

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Dieter PELZ et al.

Application No. 09/402,721

Filed: December 28, 1999

Art Unit: 1761

Examiner: Curtis Edward Shredder

For: METHOD FOR PRODUCING BEER

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

The Official Action mailed March 22, 2002 indicates that there are 2 distinct inventions (identified as Groups I and II) claimed in the referenced application. The Official Action asserts that the groups are independent and distinct and would require independent searches and that the searches for the inventions would not be coextensive.

ELECTION OF GROUP WITH TRAVERSE

In order to comply with the requirements of the Patent and Trademark Office, Applicants provisionally elect, with traverse, Group I (claims 1-5, 7-18, 20-22, 24-33, and 36-42) drawn to methods for treating beer.

DISCUSSION

It is respectfully submitted that the restriction is improper.

The claims of Group I relate to filtering beer through a porous membrane, and the claims of Group II relate to a filtration unit for filtering beer including a porous membrane. Thus, any search and consideration of the claimed subject matter of Group I will likely overlap and encompass that for the claimed subject matter of Group II. Accordingly, the searches for these two groups of claims cannot in any way be said to be completely "independent". This does not mean that the claims necessarily stand or fall together, but the overlapping nature of the searches remains and mitigates against a restriction requirement.

Examination of the patent application would be most expeditious by examining all pending claims together. As Section 803 of the MPEP requires,

> If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct and/or independent inventions.

The restriction requirement is improper because the Examiner has not shown that a search and examination of the entire application would, indeed, cause a serious burden, as required by Section 803 of the MPEP for proper restriction. In fact, a serious burden would arise only if examination of the patent application were restricted to one of the claim groups. Filing additional patent applications containing the non-elected claims would unnecessarily burden (1) the Patent and Trademark Office, since it must assume the additional labor involved in examining at least two separate applications; (2) the public, since it will have to analyze at least two patents (assuming the subject matter of each claim group is found patentable) to ascertain all of the claimed subject matter; and (3) the Applicants, since the Applicants must bear the substantial financial burden and delays associated with prosecution of multiple patent applications and the payment of maintenance fees for multiple patents.

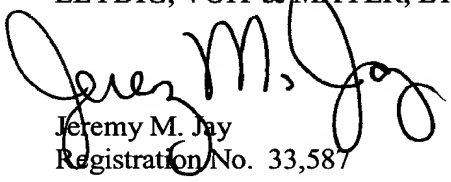
While the inventions defined by the claims may be distinct and independent, there is no demonstration that the search and examination of all the pending claims would entail a serious burden to the Examiner. In particular, it is submitted that any additional burden on the Examiner in considering Groups I and II together is not so serious as to require restriction, and therefore, Applicants respectfully request withdrawal of the restriction requirement.

A favorable action is solicited.

The Commissioner is authorized to charge any extension of time fees pursuant to 37 CFR 1.17(a)-(d) associated with this communication and to credit any excess payment to Deposit Account No. 12-1216. A duplicate copy of this Response is attached.

Respectfully submitted,

LEYDIG, VOIT & MAYER, LTD.



Jeremy M. Jay
Registration No. 33,587

Suite 300
700 Thirteenth Street, N.W.
Washington, D.C. 20005
Telephone: (202) 737-6770
Facsimile: (202) 737-6776
Dated: 17 April 2002